AMO REPORTS 83-6

RESPONSE TO THE CHILDREN'S ACT

ASSOCIATION OF MUNICIPALITIES OF ONTARIO
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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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"AMO Reports 83-6" was submitted to the Honourable Claude Bennett, Minister of Municipal Affairs and Housing and the Honourable Frank Drea, Minister of Community and Social Services, on June 3, 1983.

AMO RESPONSE TO
THE CHILDREN'S ACT
(A Consultation Paper)

A. INTRODUCTION

In 1977, the Ministry of Community and Social Services established the Children's Services Division which assumed responsibility for children's services and a variety of legislation which had previously been the responsibility of several Ministries. One of the first goals identified by the Division was to develop new legislation which would consolidate the existing Acts pertaining to children's services.[1] The intent was to develop a streamlined and rationalized service system to assist children with special needs and their families. The underlying principles of the proposed Children's Act, in large part, reflect this commitment to reform.

The Consultation Paper addresses many issues relating to children's services that AMO has considered over the past several years. AMO is pleased to have this opportunity to review and respond to the Consultation Paper. In addition, the Association appreciates the extension of the consultation period that was granted to AMO in order that a full and comprehensive review could occur.

In considering the proposed legislation, AMO notes that the recommendations appear to establish a flexible approach to children's services. While this is a laudable goal, the Association is cautious about endorsing this approach at this time in terms of the implications with respect to funding, the issue of cost-sharing and the future municipal role in children's services.

B. HISTORICAL PERSPECTIVE

AMO initially became involved in the reorganization of children's services in 1979, in response to Provincial initiatives dealing with the devolution of authority for children's services to the municipal

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1 Ministry of Community and Social Services, The Children's Act: A Consultation Paper, October, 1982, page 9.

level and the development of a new provincial-municipal cost-sharing arrangement for children's services. Because of the potential impact on municipalities of these proposed changes, AMO established a Sub-Committee on Children's Services (which received funding from the Ministry of Community and Social Services) to review and make recommendations on the Government's initiatives with respect to children's services. The Sub-Committee was responsible for policy formulation and providing input on Ministry proposals dealing with the establishment of children's services committees, the provision of direct services, municipal responsibilities and cost-sharing arrangements between the Provincial Government and municipalities.

This process was viewed by both the Provincial Government and AMO as a partnership based on cooperation and consultation until the summer of 1982 when the Government unilaterally radically changed the mandate of children's services committees. It is in light of this experience that the following analysis is presented.

C. REVIEW OF THE PROVINCIAL RECOMMENDATIONS

The Consultation Paper is divided into nine chapters. The AMO response concentrates on those chapters that are of primary concern to municipalities. These are the Declaration of Principles and the Flexible Service System.

The remaining chapters of the Act can be divided into three groups. The chapters on Voluntary Access to Services, Children in Need of Protection, and Young Offenders describe the three access routes by which children and families would obtain services. The chapter on Rights and Responsibilities of Children in Care is philosophical in nature and must be dealt with separately, while the remaining chapters on Extraordinary Measures, Adoption and Foster Guardianship, and Records and Confidentiality are primarily concerned with administrative and procedural matters.

1) Introduction

The introduction of the Consultation Paper includes a recommendation regarding the title of the proposed legislation and also explains the Ministry's approach that "the Act should provide a

framework or minimal skeleton for the children's services system in the future".[2]

The Report recommends that the title of the Act be the Children's Act. Since the Act is directed to those children in care or receiving treatment, the title of the Act should reflect this. In addition, because children should be considered in the context of the family unit, AMO believes the title would more properly be The Family and Children's Services Act.

The introduction states that much of what is contained in the existing relevant legislation would be placed in either the regulations or Ministry guidelines. While AMO agrees that housekeeping matters are appropriately dealt with in this way, the Association believes that it is essential that all provisions which will impact on municipalities be dealt with in legislation. This will ensure that any proposed changes receive full and public debate. Ministry guidelines are not necessarily subject to this degree of scrutiny, nor is their legal status clear. Municipalities, service users and providers must all be assured that any changes will be made by those who are accountable.

In reviewing the Consultation Paper AMO is concerned that the paper seems to suggest leaving much of how the children's services system should function in regulations or guidelines. This situation will not be endorsed by AMO as it allows much of the responsibility for the development and implementation of children's services policy to reside outside legislation.

2. Declaration of Principles

The Consultation Paper recommends that the Children's Act contain "a declaration of the basic goals of Ontario's children's services system to reflect the general philosophy or approach underlying the legislation".[3] The principles acknowledge the importance and uniqueness of every child and family and provide a framework of a service system which is flexible, sensitive and capable of meeting their needs. AMO commends the

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2 Ibid, page 9

3 Ibid, page 14

Government for recognizing the importance of cultural uniqueness and the value of diversity within the community, but believes that the service system should also be comprehensive in order to meet the needs of every child and family.

The Act recommends that legislation be kept to a minimum and this is evidenced by the fact that what is being proposed requires little legislation. For example it is proposed that the system be open and flexible and oriented towards children and families instead of towards service agencies and institutions and, further, that the focus be on prevention and family support programs rather than residential care. Finally it is recommended that the preferred course of action should be the least disruptive alternative.

The Consultation Paper points out that the principles were clearly stated in the Children's Services Division's papers: Basic Principles of Service Delivery and Children's Services: Past, Present and Future. However, in light of the Provincial decision to withdraw support from the original concept of local children's services committees, the assertion that the principles contained in these reports are still valid is called into question. Given the fact that in the recent past the Provincial Government has eliminated or drastically altered several proposals as witnessed by the demise of local children's services committees, the shift in policy away from decentralization, and the end of discussions on cost-sharing and funding by social indicators, municipalities must be wary of this proposed legislation which does not contain sufficient detail regarding services for children and families.

The Provincial declaration of principles recognizes the importance of the family and tends to shift the responsibility for the well-being of children away from the government back to the family. Although the Association is pleased to see the importance of the family being recognized, AMO believes that the Provincial Government must accept the ultimate responsibility for the care of children when families are unable to do so. Given the financial situation being experienced by all levels of government, AMO is concerned that the re-emphasis on the traditional avenues of assistance such as the family, church and community does not become an abdication of responsibility by the Provincial Government. In addition, AMO believes that this

goal may be unrealistic given the variety of problems facing many of today's families such as single-parenting and financial difficulties.

It must be kept in mind that regardless of what level of government is responsible for funding, the source is still the same, that is, the taxpayer. When one examines the implications of the philosophy in the Consultation Paper, the potential for a large increased demand on municipal resources becomes apparent. Over the past few years the diminishing resources and support of the volunteer sector, previously a dependable source of community support, has been keenly felt throughout the social services sector. Unless there is a dramatic increase in the funds available for family support systems which, under the proposed new system would replace many of the residential and more restrictive types of treatment, there will be inadequate funding available for services to assist the family unit. The paper cites the Ministry's policy of deinstitutionalization and the increased development of community alternatives by way of supporting their approach to the least disruptive alternative. Municipalities are experiencing an array of problems which have arisen as a result of the Provincial Government's policy of deinstitutionalization. The lack of community support systems and the lack of funds to remedy this situation are causing problems in many municipalities.

The Association endorses the Declaration of Principles put forward in the Consultation Paper as a basis on which a family and children's services system should be based. However, AMO recommends that there be further consideration and consultation with municipalities and service providers in the development and establishment of a service system based on these principles.

3. The Flexible Service System

This chapter of the Consultation Paper presents an overview of the organization of the service system and raises those issues of critical concern to AMO. It gives an overview of the new service system and addresses the subjects of decentralization, the major types of services, licensing, funding, and the delegation of involuntary powers, each of which is dealt with below.

The Consultation Paper states that the services system needs maximum flexibility to enable it to respond to changes in policies and perceived need. While AMO recognizes the benefits of a system able to respond quickly and efficiently to those requiring services, the Association reiterates its concerns as stated previously. These are firstly, that policies must be included in legislation in order that amendments are subject to full and open debate, and secondly, that a flexible system not become a route to avoid providing services.

a) Decentralization (Children's Services Advisory and Co-ordination Groups)

The Ministry recommends "That the Act include the authority for the Minister to establish local Children's Services Coordinating and Advisory Groups and to make regulations regarding the details of their operation"[4]. The Consultation Paper recommends that the Minister of Community and Social Services have the authority to establish Children's Services Coordination Groups and to make regulations regarding the details of their operation, and to act in an advisory capacity to municipal government. These Advisory Groups may be established at the request of a municipality subject to the agreement of the Minister. The stated purpose of the Advisory Groups will be to enhance municipal ability to plan for children's services; to help in the rationalization of service planning; to help in developing relationships between the Ministry field offices and municipal governments in a trusting atmosphere; and to assist in the development of multi-year action plans.[5]

AMO objects to the unilateral action taken by the Provincial Government in the summer of 1982 to terminate the development of the children's services committees. At that time the Association protested the action taken by the Ministry of Community and Social Services on the grounds that it was both premature and insensitive to local commitment. AMO requested that the existing five projects be guaranteed until at least 1985.

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4 Ibid, page 22

5 Ibid, page 22

The Association recognizes that the role and function of the Advisory Groups may be of some value. Accordingly, AMO will support their introduction in those municipalities where they are requested by council, for a trial period not exceeding three years, at which time there should be a review of the Advisory Groups. In offering this tentative endorsation AMO wishes to stress that the children's services committees, as originally introduced, would be the preferred option of AMO.[6]

There are three specific issues that require immediate clarification with respect to the Advisory Groups. First, as previously mentioned the Consultation Paper recommends that the proposed legislation include the authority for the Minister to establish Advisory Groups. This wording leaves open the question of the role of the municipality in establishing these Advisory Groups and upon whose initiative they may be created.

Second, the Consultation Paper does not indicate whether the Provincial Government intends to provide funding to the Advisory Groups. AMO's position remains firm that the Provincial Government must provide 100% of any costs of the Groups.

Third, the mandate of the Advisory Groups has not been set out in the Consultation Paper. AMO therefore believes that it is timely for municipal input to be sought and would be pleased to work with the Ministry to provide this input.

b) Major Types of Service

The Consultation Paper recommends that the proposed legislation enable the Ministry to establish or fund the following service categories: Family Support; Residential Care; Child and Family Service; Child Development; and Youth Work. Agencies would be funded on the basis of the functions they were contracted to provide to the Government and services would be purchased on a year-to-year basis.

The implementation of this proposal would greatly alter the current service providers such as the children's aid society, day care centres, children's mental health centres and a

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6 See Appendix I

variety of other agencies as we now know them as it would remove the legislative mandate, the funding base and the service role of these agencies. Not only would the service base, by which an agency identifies itself, be non-existent, but the basis of operation and interaction between agencies would also be radically altered. Therefore, while an agency such as the children's aid society would be allowed to maintain its name, the identifiers that we have come to associate with the societies would be different.

While the five service categories that are proposed in the Consultation Paper appear to be appropriate, AMO recommends that further consultation be conducted to ensure that the services previously provided by various agencies continue to be available. However, there should first be an evaluation of the services to determine whether they are still needed.

The issue of funding on the basis of function of service is unclear in a number of instances and given the Provincial goal of universal access to services, there must be a Provincial guarantee of support services, along with the appropriate funding mechanisms.

AMO cannot recommend, at this time, the adoption of the proposed service categories without further information and consultation. The issues of roles and responsibilities of the Provincial Government agencies and municipalities regarding children must be clear before endorsation is forthcoming.

c) Licensing

The Consultation Paper states that, in general, the present licensing system would be continued. A large majority of children's services can currently be provided without a license and this is likely to continue to be the case. The paper, however, recommends that in order to provide the option for increased licensing, the Minister be given the authority to add, by regulation, categories of services that would require a license. Only those services that have written standards would require a license. Failure to meet required standards, when they exist, would result in the Ministry's refusal to grant a license.

AMO concurs with the recommendation that certain types of services continue to be licensed. However, because the Minister will have a general authority to require licensing for additional services, AMO requests that information be provided regarding the types of services that are under consideration.

In addition, AMO requests the Ministry to address the issues of inspection and enforcement of standards.

Finally, AMO would be pleased to work with the Ministry to develop the licensing standards.

d) Funding

The Consultation Paper proposes that funding be based on a service planning approach. This would enable the Ministry and the service agencies to develop short and long-range plans, and would allow funding to be provided in accordance with these plans. The Consultation Paper states that the Ministry has no intention of altering existing cost-sharing arrangements.

The recommendation that the Minister be given "broad authority ... to fund services for children and families within the scope of this Act"[7], is unacceptable to AMO if these changes are not accompanied by negotiated provincial-municipal agreements on cost-sharing arrangements. The discretionary powers being afforded to the Ministry provide it with an opportunity to incur costs on behalf of municipalities without their prior consent. For example, if the Ministry wanted to reduce its costs, there is a real possibility that it could encourage greater use of cost-shared programs (as opposed to 100% Provincially funded programs) and thereby increase the cost of children's services to municipalities.

The municipal ability to pay for social services, especially with the increased demand for General Welfare Assistance, is already creating a burden on municipal budgets. Municipalities cannot accept even the remote possibility that this burden will be added to, particularly without a corresponding increase in decision-making power.

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7 Ministry of Community and Social Services, The Children's Act: A Consultation Paper, October, 1982, page 29

In light of AMO's previous experience regarding discussions with the Ministry on cost-sharing arrangements for children's services, AMO would be reluctant to enter into future discussions without a prior commitment on behalf of the Provincial Government.

AMO was involved in such discussions with the Ministry between 1979 and 1982. During that time, the Provincial Government was, in many instances, unable to provide exact expenditures on various aspects of children's services and was unable to reconcile municipal information regarding children's services expenditures with provincial data. In addition, AMO was unable to obtain five-year projections on children's services expenditures by category.

In 1980-81 and 1981-82, AMO and the Ontario Association of Children's Aid Societies participated in the Ministry-sponsored exercise of planning the allocation of funds to the societies on the basis of social indicators selected by concensus. AMO originally viewed this as an opportunity to lessen some of the funding disparities between societies, and was disappointed when the Ministry unilaterally decided to adopt an incrementalist approach with no "base-year" being established for the societies. Nevertheless, AMO did appreciate the opportunity to participate in a process which demonstrated the need for a rational method of funding.

The lack of Provincial funding for research for community-needs assessments gives rise to another concern regarding the Ministry's proposal for base funding on a service planning approach. Without competent ongoing research and analysis, community input and a viable evaluation component, flexible funding becomes just a euphamism for biased funding.

e) <u>Delegation of Involuntary Powers</u>

This section of the Consultation Paper recommends that certain extraordinary, coercive or involuntary powers, such as emergency apprehension or detention be transferred to persons or agencies who would need such powers to enable them to carry out their tasks. These special powers would be transferred at the beginning of a contract and would continue for the life of the contract. Only persons or agencies under contract with the Ministry would receive these special powers.

AMO recognizes the necessity for delegation of powers which will enable the various service agencies under contract with the Ministry to carry out their responsibilities. Such powers will be necessary at certain times, for example, when children will have to be protected from themselves or their families. However, AMO believes that appropriate guidelines would have to be provided to specify the powers being delegated to particular agencies.

4. Access Routes to Service

This section of the Consultation Paper deals primarily with how a child would come into service (because he or his family has done so voluntarily, or he is in need of protection, or he has committed a criminal offense).

The chapter on Voluntary Access to Services makes a number of recommendations outlining how a child can gain access to the service system (e.g.: parental consent under age 16, self admission for support services over 16, etc.). The technical details pose no problems for AMO. However, the chapter also includes recommendations on the role of advocates, third party reviews and the development of support systems promoted by "flexible funding provisions" which could have potential cost implications for municipalities. While AMO recognizes the need for voluntary access to services, the Association cannot endorse this principle until the funding policy has been finalized by the Ministry and endorsed by AMO.

The Consultation Paper also recommends that "a hard-to-serve" process or mechanism should be available in all areas of the province to assist children and families to obtain an appropriate service, if they have been unsuccessful in securing a service for themselves[8]. AMO recommends that this be a function of the Children's Services Advisory and Coordination Groups.

The Consultation Paper recommends that a more precise and objective definition of a child in need of protection be adopted. The paper suggests five conditions (including physical, or sexual abuse, and abandonment), one of which must be met,

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8 Ibid, page 73

and whether intervention was required. While AMO supports a more precise definition, as well as the "least intrusive - least drastic" approach to service, the Association is concerned about a possible increased demand for child and family services. Accordingly AMO recommends that the Ministry begin discussions with AMO and the children's aid societies to determine the types of services that should be available and funded.

Chapter 5, Young Offenders, summarizes the provincial consultation paper, Implementing Bill C-61, The Young Offenders Act. The Association responded to that discussion paper and submitted a report to the Provincial Government in September, 1982. The recommendations in that report continue to be AMO's position on this issue.

5. Rights and Responsibilities of Children in Care

This chapter recommends that certain fundamental rights of children in care such as the right to communicate, the right to privacy and individualization and the right to adequate care and services, be included in the proposed legislation. This issue was fully discussed in the Provincial discussion paper entitled Child Advocacy: Implementing the Child's Right to be Heard. AMO cautions the Government not to implement a system that would place an undue burden on agencies and that would result in the service system becoming overly adversarial and legalistic.

6. Procedural Matters

The remaining chapters of the Consultation Paper are Extraordinary Measures, Adoption and Foster Guardianship, and Records and Confidentiality. They deal primarily with procedural issues and themes. Insofar as the use of extraordinary measures are concerned, AMO endorses the recommendation to designate certain intrusive procedures as strictly prohibited and to closely regulate all other intrusive measures.

Chapter 8 deals with the details of adoption and foster guardianships. There are several progressive recommendations including the elimination of marital status as an adoption criteria

and the recognition of the need to consider adoptions by custom rather than by legislation. AMO endorses these recommendations and believes that most of the proposals are laudable and long-overdue. It should be noted, however, that it appears likely that the recommendations would result in an increased need for resources by the children's aid societies and this issue has not been addressed in the Consultation Paper.

Chapter 9, Records and Confidentiality, addresses the issues related to who may have access to records, and whose consent is required for the release thereof. The recommendations include concerns raised by the Kever Report on health information, and the Williams Report on government records, as well as issues arising particular and peculiar to the children's services system. AMO endorses the recommendations regarding records and confidentiality in principle and plans to respond to Ontario's freedom of information legislation when it becomes available.

D. CONCLUSIONS

While AMO is pleased to respond to the Consultation Paper and looks forward to the introduction of an omnibus bill to replace existing legislation dealing with children with special needs, some concerns still remain. The issues of roles and responsibilities of those involved in the children's services system, the need for clarification of the service categories, and the need for clarification of the funding policies must all be dealt with in the new legislation. In addition, in order to ensure a flexible service system and continuity of service, there must be some co-ordination between the Ministries of Health, Education, and Community and Social Services.

AMO requests that the Association be provided with an opportunity to review and comment upon the draft legislation prior to its introduction in the Legislature.

E. SUMMARY OF RECOMMENDATIONS

Title

1. AMO recommends The Family and Children's Services Act as the title for the new legislation.

Introduction

2. AMO recommends that all provisions which will impact on municipalities be dealt with in the legislation rather than in regulations or in Ministry guidelines.

Principles

3. AMO endorses the Declaration of Principles put forward by the Province in the Consultation Paper as a basis on which a family and children's service system should be developed.

4. AMO recommends that there be further consideration and consultation in the development and establishment of a service system based on these principles.

Children's Services Advisory and Coordination Groups

5. AMO endorses the introduction of Advisory Groups where they are requested by council. Any costs must be fully funded by the Provincial Government.

6. AMO recommends that the Provincial Government allow AMO to participate in the determination of the mandate of the Advisory Groups.

Service System Classification

7. AMO recommends that further study and consultation be undertaken regarding the service system classification proposed in the Consultation Paper.

Licensing

8. AMO recommends that existing services continue to be licensed.

9. AMO recommends that the Ministry of Community and Social Services address the issues of inspection and enforcement of standards.

10. AMO recommends that municipal input, through AMO, be sought by the Ministry of Community and Social Services to develop licensing standards, and that consultation take place before changes are made to present licensing standards.

Funding

11. AMO strongly recommends that a new cost-sharing arrangement for children's services be negotiated between the Province and the Municipalities and that the new principles of this agreement be incorporated into The Family and Children's Services Act.

12. AMO recommends that the reorganization of the children's services system not result in any increase in cost to any municipality, unless that municipality has agreed to the increase prior to it occuring and that this principle be guaranteed in The Family and Children's Services Act.

Delegation of Involuntary Powers

13. AMO recommends that discussion occur among interested parties on the subject of involuntary powers, in order to develop appropriate measures that could be incorporated into The Family and Children's Services Act.

Access Routes to Service

14. While AMO agrees with the principle of voluntary access to services, AMO cannot endorse the provisions of the Children's Act until the funding policy has been finalized by the Ministry of Community and Social Services and endorsed by AMO.

15. AMO recommends that the availability of support services and the necessary funding be provided for in the proposed legislation.

16. AMO recommends that the detail regarding the role, membership and authority of Placement Review Bodies be clarified.

17. AMO endorses the Provincial recommendation regarding the availability of a process to help hard-to-serve children.

18. AMO endorses the Provincial intention that the procedure to help hard-to-serve children be the responsibility of the Children's Services Co-ordination and Advisory Group, where applicable.

Children in Need of Protection

19. AMO endorses the Provincial recommendation regarding clarification of the definition of child in need of protection, and stresses the importance of early intervention.

20. AMO recommends that discussion take place among the Ministry of Community and Social Services, the Ontario children's aid societies, and AMO to determine the type of support services that should be consistently available and funded.

21. AMO endorses the Provincial recommendation regarding the replacement of the terms society wardship and Crown wardship with temporary and long-term guardianship.

Rights and Responsibilities of Children in Care

22. AMO endorses, in principle, the recommendations of the Province regarding the rights and responsibilities of children in care but urges the Provincial Government not to implement a system that would place an undue burden on agencies and that would result in the service system becoming overly adversarial and legalistic.

Extraordinary Measures

23. AMO endorses the Provincial recommendations regarding the prohibition of certain intrusive measures, and, the strict regulation of all other intrusive measures.

Adoption and Foster Guardianship

24. AMO endorses, in principle, the Provincial recommendations regarding adoption and foster guardianship.

Records and Confidentiality

25. AMO endorses, in principle, the recommendations regarding records and confidentiality.

Conclusion

26. AMO requests the opportunity to review and comment upon the proposed legislation prior to its introduction in the Legislature.

Minority Report
Submitted by
The Small Urban Section

The Executive Committee of the Small Urban Section of AMO felt that recommendation 5 should be amended to include some municipal funding responsibility for the Advisory Groups. The Small Urban Section felt that if a municipal council requested the establishment of an Advisory Group, the council should have some fiscal responsibility for the operation of such a Group.

APPENDIX I

Recommendation Endorsed at the 1982 Annual Conference of the Association of Municipalities of Ontario

That all municipalities with Children's Services be requested to unite with the support of the Association of Municipalities of Ontario to petition the Ministry of Community and Social Services to continue 100% funding of Children's Services Committees or the proposed Co-ordinating and Advisory Groups, and failing the necessary 100% Provincial funding, a recommendation be submitted to the Minister that the Children's Services Committee or the proposed successor, be terminated by the Province.

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64. Transportation of Dangerous Goods

82-1 Adult Residential Facilities
82-2 Response to Bill 159 - An Act to Revise the Planning Act
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82-22 Bill 179 - An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and the Monitoring of Inflationary Conditions in the Economy of the Province

83-1 Response of the Association of Municipalities of Ontario to the 1983 Provincial Transfer Payment Announcement

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